

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Telephone Number Portability

CC Docket No. 95-116

Petition of Telcordia Technologies, Inc. to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration

WC Docket No. 07-149

Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAMP LLC's Interim Role in Number Portability Administration Contract

WC Docket No. 09-109

**TELCORDIA D/B/A ICONECTIV'S OPPOSITION TO
NEUSTAR'S APPLICATION FOR REVIEW**

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INTRODUCTION AND SUMMARY

Pursuant to 47 C.F.R. § 1.115(d), Telcordia Technologies, Inc. d/b/a iconectiv (“iconectiv”) hereby opposes Neustar, Inc. (“Neustar”)’s Application for Review, which challenges a letter sent by the Wireline Competition Bureau and Public Safety and Homeland Security Bureau urging Neustar to agree to a nondisclosure agreement (“NDA”) with the North American Portability Management, LLC (“NAPM”) in order to ensure a timely transition of the Local Number Portability Administrator (“LNPA”).¹ The Bureaus’ letter was a proper exercise of the Commission’s authority to oversee the LNPA transition, including the execution of a reasonable NDA, in the face of Neustar’s continued delays.

Neustar’s Application for Review rests solely on the premise that the Bureaus improperly adjudicated a contract dispute arising under Neustar’s Master Service Argument (“MSA”), which requires contract disputes to be resolved by arbitration. But the Bureaus did no such thing. Far from adjudicating a contract dispute between Neustar and NAPM, the Bureaus simply reminded Neustar of its obligations—as the existing LNPA and under the 2015 *LNPA Selection Order*—to cooperate in the transition and suggested that if Neustar failed to sign a commercially reasonable nondisclosure agreement, this would raise questions about whether Neustar was complying with its regulatory obligations. This was an entirely proper exercise of the Bureaus’ authority:

Neustar is not just a private party to a contract; it holds its position as current LNPA because the *Commission* designated it as such, pursuant to Section 251(e). As the Commission’s designated LNPA, if Neustar continues its attempts to impede the transition, the Commission has the

¹ Neustar’s Application for Review, CC Docket No. 95-116, WC Docket Nos. 07-149, 09-109 (filed Jan. 19, 2017) (“Application for Review”).

authority to go further by ordering Neustar, as the current LNPA, to take particular actions to support the transition, and by taking enforcement action against Neustar.

Neustar's contrary argument assumes that because Neustar also has a *contractual* obligation to cooperate in the transition, the Bureaus must have been adjudicating a dispute arising under that contract. But this is a misdirection. The Bureaus did not adjudicate *any* dispute between Neustar and the NAPM—much less a dispute “arising out of or related to” Neustar's MSA; rather, the Commission—as the regulator—reminded Neustar of its independent regulatory obligations *to the Commission*. Neustar would apparently have the Commission believe that the NAPM and Neustar—through an arbitration provision in their MSA—could contractually divest the FCC of its jurisdiction. But the Supreme Court has held that a party cannot avoid its regulatory obligations through a private contract provision,² and in *EEOC v. Waffle House, Inc.*, the Supreme Court specifically held that a private arbitration agreement cannot divest a regulator of its authority to initiate a proceeding against a party to that agreement.³

The Commission need not even address Neustar's legally infirm arguments, however, because this Application for Review is procedurally barred. The Commission has made clear that a Bureau-level letter stating the Commission's views and suggesting a potential rule violation is not the type of action from which an application for review can be taken, and Neustar has not presented any of its arguments to the Bureau in time for the Bureau to consider them. Neustar's application is a meritless attempt to avoid accountability for its unreasonable failure to cooperate in the LNPA transition. The Bureaus recognized Neustar's dilatory conduct and took

² See *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 224 (1986).

³ See *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002).

appropriate steps within the authority delegated to them to “oversee the LNPA contract, or other issues related thereto.”⁴ The Commission should deny Neustar’s application.

PROCEDURAL HISTORY

The LNPA transition requires the exchange of sensitive information “vital to the functioning of the nation’s critical communications infrastructure, public safety, and the national security.”⁵ It also requires the incumbent, Neustar, to cooperate with the handover, despite its economic incentives to the contrary. Recognizing this, the Commission directed “Telcordia and Neustar to carry out their respective transition responsibilities in good faith and in a reasonable and cooperative manner.”⁶ The Commission emphasized, “This includes, but is not limited to, adherence to schedules, reasonable and cooperative behavior and commitment to customer satisfaction, integrity and business ethics, and business-like concern for the interests of the customer.”⁷

Despite the parties’ obligation to cooperate in the transition, however, and the undisputed need to protect sensitive information related to the LNPA database, Neustar has taken steps to impede the flow of information. Neustar first refused to sign a nondisclosure agreement for

⁴ *Telephone Number Portability; Petition of Telcordia Technologies, Inc. to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration; Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAMP LLC’s Interim Role in Number Portability Administration Contract*, Order, FCC 16-93, 31 FCC Rcd. 8406, 8431 ¶ 63 (2016) (“LNPA Approval Order”).

⁵ *Telephone Number Portability; Petition of Telcordia Technologies, Inc. to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration; Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAMP LLC’s Interim Role in Number Portability Administration Contract*, Order, FCC 15-35, 30 FCC Rcd. 3082, 3083 ¶ 2 (2015) (“LNPA Selection Order”).

⁶ *Id.* ¶ 159.

⁷ *Id.*

information shared through the Transition Oversight Manager, which iconectiv agreed to sign. Then, in May 2016, Neustar asserted unilaterally that information provided through multiparty meetings was not subject to any confidentiality requirements, stating this had been the case all along and would be the case moving forward. Neustar then continued, for months, to refuse to sign a reasonable NDA ensuring information shared during the transition would remain protected from further disclosure.

On November 18, 2016, Neustar filed a Number Portability Administration Center Transition Status Report concluding that the transition likely could not be completed until 2019 because NAPM and the Transition Oversight Manager had not shared certain information with Neustar.⁸ In response to Neustar's claim that NAPM had not shared information with it, NAPM wrote the Commission a series of letters explaining that Neustar had refused to negotiate a suitable NDA.⁹

To address Neustar's apparent failure to cooperate in the transition, the Wireline Competition Bureau and Public Safety and Homeland Security Bureau jointly wrote Neustar on January 6, 2017. Neustar grossly exaggerates the effect of the Bureaus' letter, claiming that the NAPM "apparently [sought] relief from the Bureaus instead of arbitrating its dispute with Neustar," and that the Bureaus "essentially resolv[ed] the dispute between Neustar and the NAPM."¹⁰ In reality, NAPM informed the Bureaus about Neustar's lengthy failure to agree to

⁸ Number Portability Administration Center Transition Status Report, CC Docket No. 95-116, WC Docket Nos. 07-149, 09-109, at 7 (filed Nov. 18, 2016).

⁹ Letter from Todd Daubert to Marlene Dortch (filed November 29, 2016) ("NAPM November 29, 2016 Letter"); Letter from Todd Daubert to Marlene Dortch (filed December 13, 2016) ("NAPM December 13, 2016 Letter"). Unless otherwise indicated, all letters referenced herein were filed in CC Docket No. 95-116 and WC Docket Nos. 07-149 and 09-109.

¹⁰ Application for Review at 5, 9.

an NDA in order to provide context to *Neustar's* claims that *NAPM* was failing to share relevant information.¹¹ Likewise, the Bureaus' letter simply reminded Neustar of its obligation under the Commission's prior orders to cooperate in the transition.

Specifically, the letter expressed concern that negotiations had gone on far too long; it opined that the NDA *NAPM* submitted to Neustar on November 22 offered a workable solution; it "strongly suggest[ed]" that the parties enter an NDA that mirrors Article 15 of the MSA in the event they could not agree on *NAPM's* proposed agreement by January 17; and it reminded Neustar that its failure to agree to a reasonable NDA would raise the question of whether Neustar was intentionally creating a delay.¹² In their letter, the Bureaus quoted extensively from the Commission's 2015 *LNPA Selection Order* and 2016 *Order* approving iconectiv's MSA as the sources of Neustar's obligation to cooperate in the transition and the Bureaus' authority to oversee the transition. They did not cite Neustar's MSA at all.

Without ever objecting to the Bureaus' letter, Neustar responded on January 17, explaining that it had submitted an NDA to *NAPM*.¹³ It filed its Application for Review two days later. Neustar subsequently signed a confidentiality agreement—thereby mooting any objection it may have had to the Bureaus' letter.

¹¹ *NAPM* December 13, 2016 Letter at 1 ("It is not reasonable for Neustar to . . . conclud[e] that the transition will not be completed until sometime in 2019 based on the fact that Neustar has not received certain information, particularly because Neustar itself is solely to blame for its lack of access to that information.").

¹² Letter from Matthew DelNero and David Simpson to Lisa Hook, at 2 (filed Jan. 6, 2017) ("Bureau Letter").

¹³ Letter from Marc Martin to Marlene Dortch, at 1-2 (filed Jan. 17, 2017) ("NAPM January 17, 2017 Letter").

ARGUMENT

The Federal Arbitration Act (“FAA”) does not apply because the Bureau did not adjudicate any dispute between Neustar and the NAPM—the parties to the arbitration agreement.¹⁴ In their letter, the Bureaus simply reminded Neustar of its regulatory obligation to cooperate in the transition and expressed the view that if Neustar failed to agree to a nondisclosure agreement, it would raise serious questions about whether Neustar was complying with this obligation. In doing so, the Bureaus communicated with Neustar informally in their capacity as the regulator; they did not purport to adjudicate a dispute between Neustar and the NAPM.

Neustar’s application—based solely on the notion that the MSA’s arbitration clause prevented the Bureaus from urging Neustar to quickly agree to an NDA—flies in the face of settled law providing that the Commission may enforce the 2015 *LNPA Selection Order* and holding that the FAA does not prevent agencies from exercising their independent enforcement authority. Moreover, Neustar’s application is procedurally flawed because the Bureau’s letter was not an action subject to Commission review and because Neustar did not present its arguments to the Bureau. The Commission should therefore deny Neustar’s application.

I. THE COMMISSION HAS BROAD AUTHORITY TO REQUIRE NEUSTAR TO COOPERATE WITH THE LNPA TRANSITION.

The Bureaus’ decision to question Neustar’s failure to agree to an NDA was well within the Commission’s authority to oversee and to ensure a smooth LNPA transition from the entity it has current designated as LNPA to the entity it has designated as the successor LNPA. An

¹⁴ Neustar is trying to have it both ways, arguing that the MSA’s arbitration clause applies to a dispute over information Neustar claims was not subject to the MSA’s confidentiality provision.

LNPA cannot serve as the LNPA without the Commission's designation as such, pursuant to Section 251(e).¹⁵ Neustar's efforts to recast this dispute as a contractual matter are a meritless attempt to sidestep its obligations under Commission rules. Indeed, Neustar's reliance on the MSA proves too much, since the MSA itself anticipates that Neustar's regulatory obligations are subject to change.¹⁶

To the extent there is a dispute, it clearly arises from Neustar's apparent failure to adhere to its obligations under the Commission's orders, not from a private contract as Neustar claims. The Bureaus sent their letter on their own behalf, not on behalf of the NAPM, in order to ensure Neustar was cooperating with the transition. They referred exclusively to the Commission's orders—not the MSA—as the source of their authority over Neustar's conduct. And it is clear from NAPM's original letter to the Commission that NAPM was not trying to resolve a contract dispute with Neustar. Rather, NAPM was responding to Neustar's accusation that NAPM was responsible for the failure to exchange confidential information.¹⁷ (Thus, if this dispute could somehow be characterized as a private contract dispute, it is one *Neustar* brought to the Commission, not NAPM.) Neustar's application for review must fail because the Commission

¹⁵ See *LNPA Selection Order* ¶ 33 (“[T]he Commission retained throughout and is exercising in this Order the power ultimately to choose the next LNPA.”)

¹⁶ MSA ¶ 25.1 (recognizing that the NPAC/SMS is subject to FCC “orders, opinions, [and] decisions,” and providing a mechanism for any necessary contractual changes). Thus, the MSA cannot defeat an obligation to cooperate that stems from an intervening Commission order, opinion, or decision.

¹⁷ To the extent Neustar argues that it cannot cooperate with the transition until the specifics of an NDA—or any other contractual changes with the NAPM—are worked out, it is wrong. In an analogous context, the Commission has refused to allow carriers to delay carrying out their obligation to immediately port numbers simply because they have not yet squared up their accounts with outgoing customers. See *In re Telephone Number Portability—Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, FCC 03-237, 18 FCC Rcd. 20,971 ¶ 15 (2003).

incontestably has authority to ensure Neustar, as its currently designated LNPA, cooperates with the transition to the successor LNPA designated by the Commission and obeys the Commission's orders to do so.

A. The Commission Retains Broad Authority to Ensure Compliance with Its Rules.

The Commission's authority to ensure Neustar's cooperation with the LNPA transition flows directly from the Section 251(e), which requires the Commission to designate entities to administer telecommunications numbering and grants the Commission "exclusive jurisdiction" over numbering, and Section 154(i), which authorizes the Commission to "perform any and all acts . . . and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions."¹⁸ Consistent with these statutory authorities, the 2015 *LNPA Selection Order* requires both iconectiv and Neustar to "carry out their respective transition responsibilities in good faith and in a reasonable and cooperative manner."¹⁹ The Commission also explicitly provided that "once the LNPA contract is in place, the Commission or the Bureau will retain ultimate oversight and control over the contract,"²⁰ and ordered the Wireline Competition Bureau and Public Safety and Homeland Security Bureau to oversee the LNPA contract *and* "issues related thereto."²¹

¹⁸ 47 U.S.C. § 251(e)(1); 47 U.S.C. § 154(i).

¹⁹ *LNPA Selection Order* ¶ 159 (quoting *Telephone Number Portability; Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAMP LLC's Interim Role in Number Portability Administration Contract*, Order, DA 11-883, 26 FCC Rcd. 6839, 6844 ¶ 5 (Wireline Comp. Bur. 2011)).

²⁰ *Id.* ¶ 195 n.667. The Commission also retained "ultimate authority over number portability matters" when it selected Neustar's predecessor as LNPA in 1997. *Telephone Number Portability*, Second Report and Order, FCC 97-289, 12 FCC Rcd. 12,281, 12,352 ¶ 129 (1997).

²¹ *LNPA Approval Order* ¶¶ 63-64.

Neustar's failure to agree to an NDA posed a significant risk to a smooth LNPA transition, and the Bureaus' letter was a proper exercise of their authority to oversee the transition from one LNPA to another and to enforce the 2015 *Order*'s obligation to cooperate. That obligation exists independently of any contract Neustar may be party to. Since Neustar has an independent obligation to cooperate in good faith with the transition, the Bureaus' letter was an appropriate expression of the Commission's concern that disagreements between Neustar and NAPM were causing unnecessary delays.²² Neustar's Application presages that "[f]uture disputes will no doubt arise between Neustar and the NAPM during the remainder of the transition to Telcordia. Indeed, the transition remains in its infancy."²³ This only amplifies the need for the Commission to recognize that it has sufficient authority as regulator and designator of the LNPA to direct its LNPA as necessary to ensure a smooth transition.

B. Neustar Cannot Contract Around Commission Requirements.

By hiding behind the MSA's arbitration clause, Neustar's petition depends on the patently absurd assumption that by contract, private parties can remove themselves from regulatory oversight while administering a statutorily mandated database carrying out a role to which they have been appointed by the Commission and overseen by the Commission. This

²² Inherent in the Commission's authority under Sections 251(e) and 154(i) is the power to craft appropriate remedies. In an appropriate case, this could include the ability to order carriers to stop paying Neustar until its improper conduct ceases. *Cf. Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Mem. Op. and Order, FCC 14-35, 29 FCC Rcd. 4186 ¶ 33 (2014) (affirming Commission order directing carriers to suspend payments to foreign company engaged in anticompetitive practices); *International Settlement Rates*, Report and Order, FCC 97-280, 12 FCC Rcd. 19806 (1997) *petition for rev. denied sub nom. Cable & Wireless, P.L.C v. FCC*, 166 F.3d 1224 (D.C. Cir 1999) (setting international settlement benchmarks backstopped by orders to prohibit U.S. carriers from paying high settlement rates, as an exercise of the Commission's authority to prevent unjust and unreasonable charges by U.S. carriers). If Neustar delays the transition through inaction, any funds it receives after May 25, 2018 would be unreasonable.

²³ Application for Review at 11.

defies common sense and the firmly established principle that “if [a] regulatory statute is otherwise within the powers of Congress, therefore, its application may not be defeated by private contractual provisions.”²⁴ The Commission should not allow Neustar to shield itself from Commission oversight through privately negotiated arbitration clauses.

II. THE FEDERAL ARBITRATION ACT AND COMMISSION PRECEDENT DO NOT PREVENT THE BUREAUS FROM REQUIRING A SMOOTH LNPA TRANSITION.

Neustar’s efforts to characterize the Bureaus’ action as a violation of the Federal Arbitration Act and Commission precedent are meritless. The FAA does not prevent agencies from carrying out their own statutory authority, and the Commission precedent Neustar cites applies only to private contract disputes.

A. The FAA Does Not Prohibit the Commission from Enforcing Its Orders.

In *EEOC v. Waffle House, Inc.*, the Supreme Court held that an arbitration clause cannot prevent a non-signatory agency from exercising its own statutory enforcement authority.²⁵ The record clearly shows that the Bureaus were seeking to vindicate their own concern that Neustar was ignoring its obligations under Commission orders, not “seeking to settle the dispute.”²⁶ Since the letter was a clear exercise of the Commission’s independent authority to enforce its own rules, it is not the type of dispute contemplated by the FAA.²⁷

²⁴ *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 224 (1986); *see also Federal-State Joint Bd. on Universal Service*, DA 07-1306, 22 FCC Rcd 5009 ¶ 12 (2007) (holding that obligation to contribute to USF cannot be contracted away), *aff’d Universal Service Contribution Methodology*, -- FCC Rcd ----, 2017 WL 150285 (rel. Jan. 13, 2017).

²⁵ 534 U.S. at 294.

²⁶ Application for Review at 8.

²⁷ *See* 9 U.S.C. § 3 (providing that FAA applies to suits and proceedings brought in federal court).

Waffle House is directly on point. In that case, an employee and employer signed an employment agreement that required any disputes to be resolved through arbitration. When the employee was fired after being injured on the job, he brought a complaint to the EEOC, instead of an arbitrator.²⁸ The EEOC then brought an action in federal district court under its statutory authority to enforce the ADA's prohibitions against employment discrimination.²⁹ The Court held that the FAA cannot require an agency that is not party to an arbitration agreement to abandon its statutory authority.³⁰

There is no dispute that the FCC did not sign Neustar's MSA or agree to be bound by the arbitration clause. Nor does even Neustar dispute that, as LNPA, it is subject to the Commission's jurisdiction with respect to its conduct as LNPA, or that the Commission can enforce the 2015 *Order*. Thus, controlling precedent prevents Neustar's MSA from interfering with the Commission's prerogative to enforce its own rules. Nevertheless, in a sleight of hand, Neustar argues that "[t]here is no question that the FAA governs the dispute *between Neustar and the NAPM*."³¹ This is misdirection: the Bureaus were not resolving a dispute between Neustar and NAPM, they were carrying out their responsibility to ensure Neustar complies with the Commission's orders.

The Supreme Court's holding in *Preston v. Ferrer* underscores the flaw in Neustar's FAA argument.³² In that case, the Court held that the FAA does not preempt agencies that are

²⁸ See *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 283 (2002).

²⁹ See *id.*

³⁰ See *id.* at 294.

³¹ Application for Review at 8 (emphasis added).

³² See *Preston v. Ferrer*, 552 U.S. 346 (2008).

not acting as an “impartial arbiter.”³³ Nothing in the Bureaus’ letter suggests they were attempting to impartially resolve a dispute between two parties to a contract; the Bureaus made clear that they were addressing their own “paramount concern” that the LNPA database not be “adversely impacted.”³⁴ In fact, nothing in the Bureaus’ letter suggests that concern was directed solely at Neustar. The Bureaus specifically stressed that “it is imperative that the parties to the transition—Neustar, iconectiv, the NAPM, and the TOM—reach agreement on what constitutes confidential information, and how to protect it, as quickly as possible.”³⁵ The Bureaus’ decision to address all parties to the transition, as well as their references to their own enforcement authority³⁶ and to the *Commission’s* expectation of “an effective, seamless, and timely transition of the LNPA”³⁷ leave no doubt that they were “pursuing an enforcement action in [their] own name.”³⁸ Since the FAA “does not mention enforcement by public agencies,”³⁹ this dispute simply falls outside the ambit of that statute.

Revealingly, Neustar cannot cite any provision of the FAA—other than a general policy preference for arbitrations—that was violated here. This stretches the FAA too far. The only Commission action Neustar can actually point to is that the Bureaus “essentially communicated” that Neustar should accept NAPM’s terms.⁴⁰ If an arbitration provision could prevent a regulator from even suggesting to a regulated entity that a particular course of conduct might bring it out

³³ *Id.* at 359.

³⁴ Bureau Letter at 1.

³⁵ *Id.* at 2.

³⁶ *Id.* at 1.

³⁷ *Id.* at 2.

³⁸ *Preston*, 552 U.S. at 359.

³⁹ *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002).

⁴⁰ Application for Review at 5.

of compliance with the agency’s rules, the Commission would have no authority to carry out its statutory mandate. The Commission should reject Neustar’s invitation to embrace absurdity and deny Neustar’s application.

B. The Bureaus’ Letter Is Consistent with Commission Precedent.

Neustar also misapplies Commission precedent. Unlike the precedent cited by Neustar, this dispute arises out of a potential violation of an order issued by the Commission. Neustar’s Commission precedent involved private disputes, and several of the decisions Neustar cites involved litigation pending in the courts.⁴¹ Neustar’s references to Commissioner O’Rielly’s recent statement in the *Broadband Privacy Order* are even farther afield. In that order, the Commission specifically proposed investigating whether to restrict service providers’ ability to impose mandatory arbitration clauses on customers,⁴² and Commissioner O’Rielly cautioned that such restrictions could violate the FAA.⁴³ But that is not the situation here. Even if the Bureau was issuing an order—which it did not do—the Bureau was not precluding arbitration as a means of settling contractual differences between the NAPM and Neustar; it was directing its regulatee and designated LNPA, Neustar, to take specific action in furtherance of its already ordered transition.

Neustar admits that Commission precedent does not foreclose Commission action where there is “a showing of a violation of the Commission’s rules.”⁴⁴ Indeed, the Commission has

⁴¹ See *Step 96 Riverbend, Inc.*, Memorandum Opinion and Order, FCC 03-255, 18 FCC Rcd. 22,734, 22,734-35 ¶ 2 (2003); *Application of Margaret Jackson*, Memorandum Opinion and Order, FCC 03-311, 18 FCC Rcd. 26,403, 26,403-04 ¶ 3 (2003); *Loral Satellite, Inc.*, Order and Authorization, DA 04-357, 19 FCC Rcd. 2404, 2420 ¶ 37 (Int’l Bur. 2004) (“*Loral Satellite*”).

⁴² See *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Report and Order, FCC 16-148, WC Docket No. 16-106, ¶ 305 (rel. Nov. 2, 2016).

⁴³ See *id.* at 218-19 (Dissenting Statement of Commissioner Michael O’Rielly).

⁴⁴ *Loral Satellite* ¶ 37.

rejected the argument that private contractual principles could block it from enforcing its own rules: in *Applications of Algreg Cellular Engineering*, a group of lottery applicants violated Commission rules by entering a profit and risk-sharing agreement.⁴⁵ Before the Commission, the applicants argued that the contracts themselves were invalid under a number of common-law principles, but the Commission held that characterizing the issue as “a mere question of the validity or enforceability of a private contract” demonstrated a “fundamental misunderstanding . . . of the authority of the Commission to enforce its own licensing rules and policies.”⁴⁶ Since Neustar’s duty to cooperate in the transition flows from a Commission order and its role as the Commission’s designated current LNPA, as well as separately under the MSA, the Commission’s general reluctance to resolve private contractual disputes does not prevent the Commission from questioning Neustar’s dilatory conduct during the transition.

III. NEUSTAR’S APPLICATION FOR REVIEW IS PROCEDURALLY BARRED.

Finally, Neustar’s application for review is procedurally barred because Neustar did not present its arguments to the Bureaus. Under rule 1.115(c), the Commission will not grant an application for review “if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.”⁴⁷ Neustar’s application does not identify any arguments that Neustar made before the Bureaus. Although Neustar’s January 17 letter to the Bureaus states that the MSA is a private contract subject to an arbitration provision, Neustar does not allege that the Bureaus’ action violated the FAA. Moreover, Neustar responded to the Bureaus’ letter only two days before it filed its application for review and *after* the Bureaus took

⁴⁵ See *Applications of Algreg Cellular Eng’g et al.*, Decision, FCC 94R-12, 9 FCC Rcd. 5098 ¶ 5 (1994).

⁴⁶ *Id.* ¶ 44.

⁴⁷ 47 C.F.R. § 1.115(c).

the action Neustar challenges. The Bureaus did not have an opportunity to consider Neustar's arbitration-clause arguments, so an application for review is inappropriate.

Finally, to the extent Neustar challenges the Bureaus' decision to caution Neustar about how its conduct would be perceived, the Commission has held that "Applications for Review may be filed only with respect to 'actions' taken under delegated authority," and that a letter which merely informs a party about the Commission's views "does not constitute an 'action,'" and therefore cannot be subject to an application for review.⁴⁸ Neustar claims that the Bureau gave it an ultimatum: adopt the NAPM's proposal or execute an NDA that mirrors language in its MSA.⁴⁹ This is simply wrong. The Bureaus "strongly suggest[ed]" that if the parties could not agree to NDA terms by January 17, they should execute an agreement like the one in the current MSA. The Bureaus' "strong suggestion" was eminently reasonable and made good policy sense as a way to revive stalled progress on the transition, and Neustar's application for review must be denied.

* * *

⁴⁸ *Applications of New Radio Corp.*, Order, FCC 86-581, 2 FCC Rcd. 112, 112 ¶ 3 n.3 (1987) (holding that letter from General Counsel advising of FCC's litigation position was not "action" subject to application for review).

⁴⁹ Application for Review at 8.

CONCLUSION

Neustar's novel interpretation of the MSA is a meritless attempt to evade oversight. But Neustar cannot overcome the substantial body of law providing that the Commission has ample authority to ensure Neustar cooperates with the transition. Moreover, if the Commission were to grant Neustar's petition, it would set a dangerous precedent, allowing regulated entities to escape oversight through private contracts. The Commission should reject this absurd result, affirm its authority to require Neustar to cooperate with the transition, and deny Neustar's petition.

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2017, the foregoing document was served by electronic mail on the following:

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